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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-206132

DATE: April 12, 1982

MATTER OF: Pandalai Coatings Company

**DIGEST:**

1. Protester's contention that it should have received award under unsolicited proposal is untimely when filed over 6 months after agency publication in Commerce Business Daily of intent to conduct open competition for allegedly same work.
2. Protest of alleged impropriety in solicitation is untimely when presented after the closing date for receipt of initial proposals.
3. Protest of alleged improper (1) evaluation of protester's proposal and (2) small business subcontracting procedures is untimely when raised more than 10 days after the basis of protest was or should have been known.
4. Where protester's submission and agency report together show that issues presented are untimely, GAO will dismiss protest without holding requested conference.

Pandalai Coatings Company (Pandalai), a small business, protests under the Department of Energy's (DOE) Program Research and Development Announcement (PRDA) No. RA22-81PC40295. Specifically, Pandalai contends: (1) that it proposed doing a portion of the work (Task II) in an unsolicited proposal prior to the issuance of the PRDA and that DOE should have considered its proposal; (2) that once the PRDA was issued, DOE unfairly changed the procurement "from [a] competitive procurement to [a] negotiated procurement"; (3) that selecting the proposal of two large businesses for negotiation violates the evaluation criteria that

offerors provide for small business involvement in their business management proposals; (4) that where a section 8(a) small business, such as Pandalai, has the capability of performing the work called for under the PRDA, DOE should include such small business; and (5) that DOE failed to properly evaluate Pandalai's proposal submitted under the PRDA. We are dismissing Pandalai's protest as untimely.

The record shows that DOE published its requirement and intent to conduct an open competition in the June 11, 1981, issue of the Commerce Business Daily (CBD), and that the closing date for receipt of proposals was October 1, 1981. Pandalai's protest was filed with our Office on January 20, 1982, which is well over 6 months after DOE gave notice of its proposed course of action in the CBD and over 3 months after the closing date for receipt of proposals.

Pandalai should have known the basis of its first ground of protest within the meaning of 4 C.F.R. § 21.1(b)(2) (1981) when notice of the procurement was published in the CBD. See Non-Linear Systems, Inc., B-182636, February 12, 1975, 75-1 CPD 91.

Pandalai's second ground of protest, improper use of negotiation, is untimely since the fact that DOE intended to conduct a negotiated procurement was apparent on the face of the PRDA. Specifically, the solicitation contained standard form 26, which at block 13 indicated that the procurement would be negotiated pursuant to 41 U.S.C. § 252(c) (1976). If Pandalai thought this improper, it should have protested prior to the closing date for receipt of initial proposals in accordance with 4 C.F.R. § 21.2(b)(1) (1981). See Jabil Industries, Inc., B-188230, February 25, 1977, 77-1 CPD 143.

The balance of the issues raised are also untimely because they were first raised more than 10 working days after Pandalai's January 14, 1982, receipt of a DOE letter advising Pandalai that:

\* \* \* following a careful evaluation of proposals submitted \* \* \* the Source Selection Official has selected a proposal submitted by \* \* \* [two big

businesses] for negotiation of a contract. It has been determined that this proposal offers the greatest potential to best achieve the program objectives."

Under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1981), Pandalai had until January 28, 1982, to protest (1) the alleged improper evaluation of its proposal and (2) the alleged improper small business subcontracting procedures. These issues were first raised by Pandalai on March 1, 1982.

It is clear from Pandalai's submission and the agency report that the issues presented are not for our consideration. We therefore are deciding the protest without the conference which Pandalai has requested since it would serve no useful purpose. See Northern Illinois University, B-194055, March 15, 1979, 79-1 CPD 184.

Accordingly, the protest is dismissed.

*F. H. Barclay, Jr.*  
For Harry R. Van Cleve  
Acting General Counsel